

SECOND REGULAR SESSION

HOUSE BILL NO. 1188

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ELMER (Sponsor), MORRIS, MESSENGER,
ANDERSON AND BURLISON (Co-sponsors).

4721L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to unlawful employment practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 285, RSMo, is amended by adding thereto one new section, to be known as section 285.580, to read as follows:

285.580. 1. This section shall be known and may be cited as the "Whistleblower's Protection Act".

2. As used in this section, the following terms shall mean:

(1) "Because" or "because of", as it relates to a decision or action, the person's status as a protected person was the motivating factor;

(2) "Employer", for purposes of this section, an entity that has six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. "Employer" does not include the state of Missouri or its political subdivisions, a corporation wholly owned by the state of Missouri, an individual employed by an employer, or corporations and associations owned and operated by religious or sectarian groups;

(3) "Proper authorities", a governmental or law enforcement agency, or an officer or the employee's human resources representative employed by the employer;

(4) "Protected person", a person who has reported to the proper authorities an unlawful act of the employer or its agent or who reports to an employer serious misconduct of the employer or its agent that violates a clear mandate of public policy as articulated in

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 a constitutional provision, statute, regulation promulgated under statute, or a person who
18 has refused to carry out a directive issued by an employer or its agent that if completed
19 would be a violation of the law, or a person who engages in conduct otherwise protected
20 by statute or regulation is a protected person, where the protecting statute or regulation
21 does not provide for a private right of action. A person is not a "protected person" where
22 the person is exempt from overtime compensation under the Fair Labor Standards Act, or
23 is a supervisory, managerial, or executive employee or an officer of the employer, and the
24 unlawful act or serious misconduct reported concerns matters upon which the person is
25 employed to report or provide professional opinion.

26 3. This section is intended to codify the existing common law exceptions to the at-
27 will employment doctrine and to limit their future expansion by the courts. This section
28 shall provide the exclusive remedy for any and all unlawful employment practices
29 articulated herein and hereby abrogates any common law causes of action to the contrary.

30 4. It shall be an unlawful employment practice for an employer to discharge or
31 retaliate against an individual defined as a protected person in this section, because of that
32 person's status as a protected person.

33 5. A protected person aggrieved by a violation of this section shall have a private
34 right of action for actual damages for violations of this section but not for punitive
35 damages. However, if a private right of action for damages exists under another statutory
36 or regulatory scheme, whether under state or federal law, no private right of action shall
37 exist under this statute.

38 6. Any party to any action initiated under this section may demand a trial by jury.

39 7. (1) A protected person aggrieved by a violation of this section shall have a
40 private right of action which may be filed in a court of competent jurisdiction. The only
41 remedies, legal or equitable, which are available in such an action are:

42 (a) Back pay; and

43 (b) Reimbursement of medical bills incurred in treatment of mental anguish.

44 (2) If a protected person proves, by clear and convincing evidence, that the conduct
45 of the employer was outrageous because of the employer's evil motive or reckless
46 indifference to the rights of others, then in addition to the amounts referenced in
47 paragraphs (a) and (b) of subdivision (1) of this subsection, an additional double amount
48 as liquidated damages may be awarded. In applying this subdivision, the provisions of
49 section 510.263 shall be applied as though liquidated damages were punitive damages and
50 as though the amounts referenced in paragraphs (a) and (b) of subdivision (1) of this
51 subsection were compensatory damages.

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